

BEFORE THE
BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANDREW TOBEY GOOTNICK, Ph.D.
65 San Carlos Way
Novato, California 94945

Psychologist's License Number PSY 5743

Respondent.

Case No. W 241

OAH Case No. N 2002120088

DECISION AFTER REMAND FROM SUPERIOR COURT

This matter was heard before Ruth S. Astle, Administrative Law Judge of the Office of Administrative Hearings on January 27, 28, 29, and 30 and February 3, 2003, in Oakland, California.

David M. Carr, Deputy Attorney General, represented the complainant. John L. Fleeer, Attorney at Law, now located at 91 Tara Road, Orinda, CA, 94563, represented the respondent who was present. The matter was submitted to the Administrative Law Judge on February 3, 2003, after the Accusation was amended by the complainant to conform to proof.

The Board of Psychology (Board) considered, but declined to adopt, the Administrative Law Judge's February 28, 2003, proposed decision in this matter and instead elected to decide the case upon the record, including the transcript, pursuant to Government Code section 11517. On May 21, 2003, the Board issued its Order of Non-Adoption of Proposed Decision. Written arguments were timely submitted by both parties. On November 14, 2003, the parties presented oral argument before the Board itself.

In its Order of Non-Adoption, the Board specifically requested argument directed toward why the penalty should not be reconsidered and whether a violation of Business and Professions Code section 2960(o) occurred. In his written argument, the Deputy Attorney General accurately indicated that the Accusation had been amended at the hearing to delete the allegation of a violation of Business and Professions Code section 2960(o) (sexual misconduct).

Having read and considered the entire record, including the transcript, the Board issued a decision pursuant to Government Code section 11517 on December 4, 2003, to

become effective January 3, 2004 (the December 4, 2003 decision). The Board increased the penalty proposed by the Administrative Law Judge and made other minor changes.

Respondent filed a Petition for Writ of Administrative Mandamus in Sacramento Superior Court (*Gootnick v. Board of Psychology, et al.*, Case No. 03CS01772.). The Court ordered a stay of the Board's December 4, 2003 decision on January 2, 2004, which remains in effect. The Superior Court granted the writ in part and denied it in part. On April 20, 2004, the Court issued its Statement of Decision, Judgment Granting Peremptory Writ of Administrative Mandamus (Judgment) and Peremptory Writ of Administrative Mandamus (Writ).

The Judgment and Writ remanded the proceedings back to the Board, directed it to set aside its December 4, 2003 decision and to reconsider its actions in light of the Court's Statement of Decision. In its Statement of Decision, the Court indicated that the factual findings did not support two of the penalty provisions: 1) suspension of Respondent's psychotherapy practice and 2) a probationary requirement of psychotherapy.

Having reconsidered the matter in light of the Court's Statement of Decision, the Board now makes the following decision in compliance with the Writ. A copy of the Writ, the Judgment, and the Statement of Decision are attached as Exhibit "A." The Board's decision of December 4, 2003, in this matter is hereby set aside.

Upon reconsideration, the Board finds that the superior court did not disturb the findings as to the nature and extent of the violations. The record supports that respondent committed gross negligence in: allowing the patient's treatment to be dictated by the patient; taking photos of the patient without clothes on, including taking a close up of the patient's genitalia; and subjecting, even if it was upon request, a suicidal, highly stressed patient with post traumatic stress disorder to a period of extended nudity, particularly in light of the fact that the nudity and photographs served no diagnostic purpose. In addition, the record supports that respondent committed repeated negligent acts in that respondent did not keep even the minimum level of documentation regarding treatment and did not consult with his peers when he performed a nontraditional, potentially harmful intervention.

This gross negligence and repeated negligent acts warrant discipline. Except as specifically excluded below, the terms and duration of probation spelled out in the December 4, 2003 decision are necessary and appropriate to protect public safety in light of the findings summarized above. A copy of the Board's December 4, 2003 decision is attached as Exhibit "B."

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The attached December 4, 2003 decision is incorporated by reference and is hereby adopted by the Board as its decision with the following changes:

1. Paragraph 1 of the Order, titled "Actual Suspension," is deleted.
2. In order to harmonize it with the deletion noted above, paragraph 2 of the Order, titled "Practice Monitor," is amended to delete the opening words "60 days prior to commencement of practice" and to replace them with "Within 90 days of the effective date of this decision."
3. Paragraph 3 of the Order, titled "Psychotherapy," is deleted.

This decision shall become effective on June 24, 2004.

IT IS SO ORDERED this 25th day of May, 2004.



JACQUELINE HORN, Ph.D.
President, Board of Psychology

EXHIBIT A

1 John L. Fleer (SBN 99668)
2 LAW OFFICES OF JOHN L. FLEER
3 A Professional Corporation
4 91 Tara Road
5 Orinda, CA 94563
6 Telephone: 925.258.3400
7 Facsimile: 925.258.3500

8 Attorneys for Petitioner
9 Andrew T. Gootnick, Ph.D.

10
11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SACRAMENTO**

13 ANDREW T. GOOTNICK, Ph.D.

No. 03CS01772

14 Petitioner,

Unlimited Jurisdiction

15 vs.

PEREMPTORY WRIT OF MADAMUS

16 BOARD OF PSYCHOLOGY,
17 DEPARTMENT OF CONSUMER
18 AFFAIRS, STATE OF CALIFORNIA,

19 Respondents.

20 The people of the State of California to Board of Psychology, Board of Consumer Affairs,
21 State of California, Respondent:

22 Judgment having been entered in this action, ordering a peremptory Writ of Mandamus
23 be issued from this Court,

24 YOU ARE HEREBY COMMANDED immediately on receipt of this Writ to set aside
25 your Decision of December 4, 2003, in the administrative proceedings entitled in the Matter of
26 the Accusation Against: Andrew Tobery Gootnick, Ph.D., Case No. W241, OAH No. N-
27 2002120088, which proceedings are hereby remanded to you, to reconsider your actions in the
28 light of this Court's Statement of Decision, and to take any further action specially enjoined on
you by law; but nothing in this Writ shall limit or control the discretion legally vested in you.

///

1 You are further commanded to make and file a return to this Writ on or before June 7,
2 2004, setting forth what you have done to comply.

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4 DATED: APR 20 2004

Jody Patel
Clerk

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6 By: B. BEDDOW
Deputy Clerk

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8 LET THE FOREGOING WRIT ISSUE.
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RECEIVED

APR - 6 2004

B. BEDDOW
DEPUTY CLERK

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Attorneys for Petitioner
Andrew T. Gootnick, Ph.D.

ENDORSED

APR 20 2004

By B. Beddow, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

ANDREW T. GOOTNICK, Ph.D.

Petitioner,

vs.

BOARD OF PSYCHOLOGY,
DEPARTMENT OF CONSUMER
AFFAIRS, STATE OF CALIFORNIA,

Respondents.

No. 03CS01772

Unlimited Jurisdiction

JUDGMENT GRANTING
PEREMPTORY WRIT OF MADAMUS

This matter came regularly before this Court on February 20, 2004, for hearing.

John L. Fleer appeared as attorney for Petitioner. David Carr, Deputy Attorney General of the State of California appeared as attorney for Respondent. The record of the administrative proceedings having been received into evidence and examined by the Court, arguments having been presented, and the Court having made a Statement of Decision, which has been signed and filed,

IT IS ORDERED that:

1. A peremptory Writ of Mandamus shall issue from the Court, remanding the proceedings to Respondent and commanding Respondent to set aside its Decision of December 4, 2003, in the administrative proceedings entitled in the Matter of the Accusation Against

1 Andrew Tobey Gootnick, Ph.D. Before the Board of Psychology, Case No. W241, OAH No.
2 N2002120088, and to reconsider its action in light of this Court's Statement of Decision, and to
3 take any further action not enjoined by law; but nothing in this Judgment or that Writ shall limit
4 or control in any way the discretion legally vested in Respondent.

5 The Stay of Decision granted by this Court on January 2, 2004, is to remain in effect until
6 all proceedings on the matters raised by the Petition for Writ of Mandate have become final.

7
8 DATED: APR 20 2004



Judge of the Superior Court
Lloyd G. Connelly

10
11 Judgment entered on _____, 2004, in the Judgment Book, Volume No.____,

12 Page _____.

13 DATED:

Clerk

15 By:

Deputy Clerk

RECEIVED

APR - 6 2004

B. BEDDOW

DEPUTY CLERK

By 6

John L. Fleeer (SBN 99668)
LAW OFFICES OF JOHN L. FLEER
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Telephone: 925.258.3400
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Attorneys for Petitioner
Andrew T. Gootnick, Ph.D.

ENDORSED

APR 20 2004

By B. Beddow, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

ANDREW T. GOOTNICK, Ph.D.

No. 03CS01772

Petitioner,

Unlimited Jurisdiction

vs.

STATEMENT OF DECISION

BOARD OF PSYCHOLOGY,
DEPARTMENT OF CONSUMER
AFFAIRS, STATE OF CALIFORNIA,

Respondents.

This matter came regularly before this Court on February 20, 2004, for hearing.

John L. Fleeer appeared as attorney for Petitioner. David Carr, Deputy Attorney General of the State of California appeared as attorney for Respondent. The record of the administrative proceedings having been received into evidence and examined by the Court, arguments having been presented, and the matter having been submitted for decision, the Court makes the following Statement of Decision in support of its granting a peremptory Writ of Mandamus setting aside Respondent's Decision of December 4, 2003.

A principle controverted issue at trial was whether the penalty imposed by Respondent constituted a clear abuse of discretion. The Court has determined that, in imposing the penalties of suspension of practice and required psychotherapy, Respondent has clearly abused its discretion. The factual and legal basis of this determination is as follows:

LLOYD CONNELLY

Respondent's factual findings do not support the suspension of Petitioner's psychotherapy practice, nor do they support a requirement that Petitioner engage in psychotherapy. No finding of sexual misconduct was made against Petitioner. Respondent specifically found that "[I]t is not against the public interest to allow [Gootnick] to practice psychology under ~~minimum~~ terms and conditions. [Gootnick] has practiced without incident for 25 years. He is well-established in his community. It is extremely unlikely that anything like this would ever happen again." Accordingly, it was an abuse of discretion for Respondent to order a suspension of Dr. Gootnick's practice.

Respondent further found "no competent evidence that [Gootnick] had any personal problems that adversely affected treatment or harmed the patient." Accordingly, it was an abuse of discretion for Respondent to order Dr. Gootnick to undergo psychotherapy.

The Court finds that Respondent's Decision was, in all other respects, within Respondent's discretion to impose the other disciplinary terms. The Court has further determined that the findings of the Board were sufficiently supported by the evidence.

Judgment should be entered:

A. Ordering a peremptory Writ of Mandamus to issue from this Court, remanding the proceedings to Respondent and commanding Respondent to set aside its Decision and to reconsider the penalties so as to be consistent with this Court's Statement of Decision and the factual findings as contained in Respondent's Decision. The Court would expect on remand that the penalties be revised or, in the alternative, that the Court be provided with a clear and thorough explanation of how suspension of practice and required psychotherapy could reasonably be imposed given Respondent's own factual findings.

B. Respondent is ordered to issue its revised Decision on or before June 7, 2004.

C. The Stay of Decision initially granted by this Court on January 2, 2004, will remain in effect until all proceedings on the matters raised by the Petition for Writ of Mandate have become final.

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Let Judgment be entered accordingly.

DATED: APR 20 2004



Judge of the Superior Court
Lloyd G. Connelly

PROOF OF SERVICE

I declare that I am employed in the County of Contra Costa, California; I am over the age of 18 years and not a party to the within action; my business address is 91 Tara Road, Orinda, California 94563. I served a true and accurate copy of the document(s) entitled: **PEREMPTORY WRIT OF MANDAMUS; JUDGMENT GRANTING PEREMPTORY WRIT OF MANDAMUS** on the party(ies) in this action by placing said copy(ies) in a sealed envelope each addressed as follows:

David Carr, Esq.
Deputy Attorney General
Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
PH: 415.703.5538
FX: 415.703.5480

☒ [By First Class Mail] Pursuant to Code of Civil Procedure §1013a, I am readily familiar with my employer's practice for collecting and processing documents for mailing with the United States Postal Service. On the date listed herein, following ordinary business practice, I served the within document(s) at my place of business, by placing a true copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, for collection and mailing with the United States Postal Service where it would be deposited with the United States Postal Service that same day in the ordinary course of business.

☐ [By Overnight Courier] Pursuant to Code of Civil Procedure §1013, I deposited each envelope, with charges thereon fully prepaid, to be delivered via **FEDERAL EXPRESS** to the parties so designated on the service list.

☐ [By Hand] Pursuant to Code of Civil Procedure §1011, I directed each envelope to the party(ies) so designated on the service list to be delivered by courier this date. A proof of service by hand executed by the courier shall be filed/lodged with the court under separate cover.

☐ [By Hand] Pursuant to Code of Civil Procedure §1011, I hand-delivered the above document to the party(ies) so designated on the service list.

☐ [By Facsimile Transmission] Pursuant to Code of Civil Procedure §1013, I am readily familiar with my employer's practice for processing documents via facsimile transmission. The within document(s) was/were placed in the facsimile machine with all costs of the transmission prepaid, directed to the party(ies) so designated on the service list using the last-known facsimile number(s), and processed through the facsimile machine, until a report was provided by that equipment indicating that the transmission was successful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: April 30, 2004


Marcia Schuyler

EXHIBIT B

BEFORE THE
BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANDREW TOBEY GOOTNICK, Ph.D.
65 San Carlos Way
Novato, California 94945

Psychologist's License Number PSY 5743

Respondent.

Case No. W 241

OAH Case No. N 2002120088

DECISION AFTER NON-ADOPTION

This matter was heard before Ruth S. Astle, Administrative Law Judge of the Office of Administrative Hearings on January 27, 28, 29, and 30 and February 3, 2003, in Oakland, California.

David M. Carr, Deputy Attorney General, represented the complainant.

John L. Fleer, Attorney at Law, Fleer, Daugherty & Raub, 1646 N. California Blvd., Suite 680, Walnut Creek, California 94596 represented the respondent who was present.

The matter was submitted to the Administrative Law Judge on February 3, 2003, after the accusation was amended by the complainant to conform to proof.

The Board of Psychology (Board) considered, but declined to adopt, the Administrative Law Judge's February 28, 2003, Proposed Decision in this matter and instead elected to decide the case upon the record, including the transcript, pursuant to Government Code section 11517. On May 21, 2003, the Board issued its Order of Non-Adoption of Proposed Decision. Written arguments were timely submitted by both parties. On November 14, 2003, the parties presented oral argument before the Board itself.

In its Order of Non-Adoption, the Board specifically requested argument directed toward why the penalty should not be reconsidered and whether a violation of Business and Professions Code section 2960(o) occurred. In his written argument, the Deputy Attorney General accurately indicated that the Accusation had been amended at the hearing to delete the allegation of a violation of Business and Professions Code section 2960(o) (sexual misconduct).

Having read and considered the entire record, including the transcript, the Board, pursuant to Government Code section 11517, decides the case as follows:

FACTUAL FINDINGS

1. Thomas S. O'Connor made this accusation in his official capacity as the Executive Officer of the California Board of Psychology (Board) and not otherwise.
2. At all times material to this matter, Andrew Tobey Gootnick, Ph.D. (respondent) has held Psychologist's License No. PSY 5743, which was issued to him by the Board on December 18, 1978. His license expired on November 30, 2003 and has not yet been renewed.
3. At all times relevant to this matter, respondent has practiced as a psychologist in the State of California.
4. Patient P-1 received treatment from respondent for job related stress and anxiety issues in the early 1990s. Respondent diagnosed P-1 with post traumatic stress disorder with dissociative and paranoid aspects and considered that he might be delusional. Respondent terminated treatment with the patient some time in 1994.
5. P-1 returned to respondent for treatment in March of 2002.
6. During the intervening time (1997) respondent did give a deposition in a case that the patient brought against his employer. Respondent's deposition was not completely favorable toward the patient and ultimately the patient apparently lost his law suit.
7. The patient videotaped one of the sessions. The video has no sound. It shows P-1 enter the room and sit down. Respondent then moves his hand in a circular motion in front of P-1 briefly (apparently at the patient's request). Then respondent retrieves a picture (of blue sky) and gives it to the patient. Then respondent sits down. After a time, P-1's head appears to slump forward a bit, briefly. Then P-1 raises his head and lifts his arm in from of him with his palm facing respondent. Shortly thereafter, P-1 stands up and takes off his clothes. Throughout the session, P-1 moves in a rigid, methodical and deliberate (robot-like) manner.
8. The videotape also shows respondent retrieve a Polaroid camera and position a floor lamp near P-1 to provide more lighting in the room. Respondent takes several pictures of P-1 in a variety of poses and from different angles while the patient is nude. Respondent is clearly directing the patient's movements. The poses include P-1 standing against a wall and lying on the floor on his back. The angles include pictures from the front, from the back, from both sides and when P-1 is lying on the floor, from above. Respondent also takes a close-up of the patient's groin area.

9. The videotape also shows respondent touching P-1 on several occasions. Once while sitting in his chair, respondent reaches forward and appears to massage P-1's thighs before directing P-1 to massage his own thighs. Then, while P-1 stands with his back to the camera, respondent sits on a sofa in front of the patient, partially hidden, and touches or massages P-1's thigh or thighs. Then, while standing to the side of P-1 who is standing and slightly bent over, respondent touches or massages the back of P-1's left thigh. Then, again, while standing behind P-1 who is standing with his left side to the camera, respondent places his hands on P-1's lower back and massages it. Then, while sitting in front of P-1 who is standing with his back to respondent and right side to the camera, respondent once again massages respondent's lower back. In all but the last instance, P-1 is unclothed from the waist down.

10. During the course of the session, the videotape also shows P-1 holding his groin area. It is not clear what he is doing because his back is to the camera. He does appear to be rubbing his thighs at one point and he grabs his own buttocks. Respondent states that the patient is holding his genitals and saying that they hurt. The patient also told respondent that he had "dead legs" and muscle spasms in his thighs. Respondent is massaging the patient where the patient is complaining of pain and muscle spasms.

11. Finally, the videotape shows P-1 getting dressed, respondent rotating his right palm in front of P-1, P-1's head slumping forward briefly, respondent directing P-1 to pick up a picture from the floor in front of him (the picture of the blue sky), P-1 picking up the picture and putting it into an envelope that was handed to the patient by respondent, and P-1 leaving the room.

12. Respondent claims that P-1 was suicidal, was incredibly agitated and frightened, and claimed to have massive genital pain. Respondent contends that P-1 saw a chart on his wall addressing body work therapy, and pleaded for respondent to do this type of therapy with him. Respondent claims that the patient pleaded with him to take pictures of him unclothed. Respondent went along with the patient to keep the patient happy. Respondent admits that the pictures did not serve any diagnostic or therapeutic purpose for this patient.

13. Respondent sometimes takes diagnostic photographs of patients in bathing suits or underwear. He uses the photographs as a tool to help him find blockages and a diagnostic record of what he sees. He compares it to a chiropractor taking photographs to see where to intervene. Respondent then has the patients do exercises at home to help the patient with the areas that are dysfunctional.

14. Respondent sometimes practices a type of body psychotherapy and is a follower of Stanley Kelleman who has written books about this type of therapy. He does this type of therapy with patients from time to time, but it is not a very common type of therapy.

15. Respondent denies using hypnotherapy with the patient. He does have a certificate on his office wall reflecting that he was trained in hypnotherapy. He used it briefly in the early 1980s, but was not very good at it so he discontinued using it.

16. Respondent did not keep any records of P-1's therapy and that he did not keep any treatment records in his practice. However, he has started keeping records. He is still not 100%, but is making an effort to dictate notes at the end of each session.

17. It was not established by clear and convincing evidence that respondent did not inform P-1 of the nature of the activities of the May 29, 2002 session. The patient did not testify in this hearing. It must be noted that respondent claims that it was the patient's idea to be photographed without any clothing. There is no competent evidence to the contrary.

18. It was not established by clear and convincing evidence that respondent did not obtain informed consent from P-1 for the activities of the May 29, 2002 session. While there was no written consent form, it was not established that a written consent form is required. Since the patient did not testify there is no evidence that he did not give informed consent and there is no evidence contrary to respondent's claim that the patient not only gave his consent, he created the situation.

19. It was not established by clear and convincing evidence that respondent allowed his own personal interests to shape his treatment of P-1 in disregard of P-1's best interest.

20. It was established that respondent did not maintain even a minimum level of documentation of his sessions with P-1 as required by the standard of care/practice. This is a simple departure from that standard.

21. It was not established by clear and convincing evidence that respondent engaged in an exploitive relationship with P-1 in that he took photographs of P-1's genitalia. Respondent did not use these photographs in any way that could be characterized as exploitive.

22. It was established that respondent engaged in conduct that used a nontraditional, potentially harmful, intervention with P-1 without consultation with peers and/or other peer interaction designed to protect P-1 from harm. Respondent had many resources including Dr. Kelleman, to whom he could have discussed this patient's highly unusual request to be photographed without his clothing. Respondent indicated that he was not sure this was such a good idea. The standard of practice requires that respondent consult with his peers in a situation like this. This is a simple departure from the standard.

23. It was not established by clear and convincing evidence that there are grounds for disciplinary action based on the fact that respondent's actions in his treatment of P-1 had serious sexual overtones. Taking pictures of the patient without his clothes on, alone, does

not have sexual overtones. Claimant's expert agreed that there was no sexual misconduct involved in this matter.

24. It was not established by clear and convincing evidence that respondent was required to immediately send the patient to an emergency room when the patient complained of massive genital pain. Nor was it established that respondent placed P-1's life in danger by undertaking treatment. Respondent did tell the patient, at least twice, to get an evaluation from a medical doctor. The patient said he did get a medical evaluation and that there was nothing medically wrong. It might have been prudent for respondent to be more aggressive about following up on this and asking who evaluated the patient, etc., but it was not established that this was a departure from the standard.

25. It was established that respondent used extremely bad judgment in permitting the patient's treatment to be dictated by the patient. There was no therapeutic reason for respondent to photograph the patient without his clothes and certainly no therapeutic reason to take a close up photograph of the patient's genitalia. It was an extreme departure from the standard of care to allow the patient to orchestrate this situation.

26. It was established that respondent subjected P-1, a highly stressed patient with post traumatic stress disorder, to a period of extended nudity and to having photographs taken of him in the nude although these actions are not related to P-1's presenting problems and symptoms. If respondent believed that this patient needed diagnostic photographs, he was obligated to take those pictures with the patient dressed in a bathing suit or underwear. However, respondent testified that the photographs were of no diagnostic value and that he only did it to pacify the patient. This constitutes an extreme departure from the standard of practice.

27. Respondent was arrested by the San Rafael Police Department. The case was never pursued by the prosecutor. It is probably the case that the patient created this situation for secondary gain. Regardless, respondent is responsible for his own actions. It is not against the public interest to allow respondent to continue to practice psychology under terms and conditions. Respondent has practiced without incident for 25 years. He is well established in his community. It is extremely unlikely that anything like this would ever happen again.

28. There was no competent evidence that respondent had any personal problems that adversely affected treatment or harmed the patient. Respondent presented expert testimony that he is well adjusted and does not suffer from any significant psychological impairment.

29. The complainant requests cost recovery in the amount of \$22,427.89. Based on the matters that were actually proven, the change in the severity of the charges (all of the sexual misconduct charges were dismissed) and respondent's good faith effort to defend himself, the reasonable amount of cost recovery is \$1,000.00.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 4 through 16 and 20 and 22, grounds for disciplinary action exists pursuant to Business and Professions Code section 2960(r) (repeated negligent acts). Respondent did not keep even the minimal level of documentation and did not consult with his peers.

2. By reason of the matters set forth in Findings 4 through 15 and 25, and 26, grounds for disciplinary action exists pursuant to Business and Professions Code section 2960(j) (gross negligence). Respondent used poor judgment in taking nude photographs of the patient without any therapeutic reason. That conduct constitutes unprofessional conduct.

3. By reason of the matters set forth in the Findings above, specifically Findings 17, 18, 19, 21, 23 and 24, it was not established pursuant to Business and Professions Code sections 2960 (i) (violating rule of professional conduct), (k) (violating laws or regulations governing the practice of psychology), (r) (repeated negligent acts), or Title 16 California Code of Regulations section 1396.1 (permitting personal problems to adversely affect treatment or harm patient) that grounds for disciplinary action exists upon any other facts or omissions than those set forth in Legal Conclusions 1 and 2.

4. The matters set forth in findings 27 and 28 have been considered in making the following order.

5. Cost recovery is granted in the amount of \$1,000 based on the factors suggested in *Zuckerman v. Board of Chiropractic Examiners*, 29 Cal. 4th 32.

ORDER

The Psychologist's License No. PSY 5743 issued to Andrew Tobey Gootnick, Ph.D. is hereby revoked pursuant to Legal Conclusions 1 and 2, separately and jointly. However, the revocation is stayed for a period of five (5) years upon the following terms and conditions:

1. Actual Suspension

Respondent is suspended from the practice of psychology for one (1) year beginning with the effective date of this Decision. During the suspension, any probation period is tolled and will not commence again until the suspension is complete.

2. Practice Monitor

60 days prior to commencement of practice, respondent shall submit to the Board or its designee for prior approval, the name and qualifications of a psychologist who has agreed to serve as a practice monitor. The monitor shall 1) be a California-licensed psychologist with a clear and current license; 2) have no prior business, professional,

personal or other relationship with respondent; and 3) not be the same person as respondent's therapist. The monitor's education and experience shall be in the same field of practice as that of the respondent.

Once approved, the monitor shall submit to the Board or its designee a plan by which respondent's practice shall be monitored. Monitoring shall consist of a least one hour per week of individual face to face meetings and shall continue during the entire probationary period. The respondent shall provide the monitor with a copy of this Decision and access to respondent's patient records. Respondent shall obtain any necessary patient releases to enable the monitor to review records and to make direct contact with patients. Respondent shall execute a release authorizing the monitor to divulge any information that the Board may request. It shall be respondent's responsibility to assure that the monitor submits written reports to the Board or its designee on a quarterly basis verifying that monitoring has taken place and providing an evaluation of respondent's performance.

Respondent shall notify all current and potential patients of any term or condition of probation that will affect their therapy or the confidentiality of their records (such as this condition, which requires a practice monitor/billing monitor). Such notifications shall be signed by each patient prior to continuing or commencing treatment.

If the monitor quits or is otherwise no longer available, respondent shall get approval from the Board for a new monitor within 30 days. If no new monitor is approved within 30 days, respondent shall not practice until a new monitor has been approved by the Board or its designee. During this period of non-practice, probation will be tolled and will not commence again until the period of non-practice is completed. Respondent shall pay all costs associated with this monitoring requirement. Failure to pay these costs shall be considered a violation of probation.

3. Psychotherapy

Within 90 days of the effective date of this Decision, a therapist shall be selected by the respondent for approval by the Board. The therapist shall 1) be a California-licensed psychologist with a clear and current license; 2) have no previous business, professional, personal, or other relationship with respondent; and 3) not be the same person as respondent's monitor. Respondent shall furnish a copy of this Decision to the therapist. Psychotherapy shall, at a minimum, consist of one hour per week over a period of 52 weeks after which it may continue or terminate upon the written recommendation of the therapist with approval by the Board or its designee. The Board or its designee may order a re-evaluation upon receipt of the therapist's recommendation.

Respondent shall execute a release authorizing the therapist to provide to the Board or its designee any information the Board deems appropriate, including quarterly reports of respondent's therapeutic progress. It shall be respondent's responsibility to assure

that the required quarterly reports are filed by the therapist in a timely manner. If the therapist notifies the Board that the therapist believes the respondent cannot continue to safely render psychological services, respondent shall immediately cease accepting new patients and, in accordance with professional standards, shall appropriately refer/terminate existing patients within 30 days and shall not resume practice until a Board-appointed evaluator determines that respondent is again safe to practice. During this period of non-practice, probation shall be tolled and will not commence again until the period of non-practice is completed.

If, prior to the termination of probation, respondent is found not to be mentally fit to resume the practice of psychology without restrictions, the Board shall retain continuing jurisdiction over the respondent's license and the period of probation shall be extended until the Board or its designee determines that the respondent is mentally fit to resume the practice of psychology without restrictions.

Cost of psychotherapy is to be paid by the respondent.

4. Coursework

Respondent shall take and successfully complete not less than 12 hours of coursework each year of probation in the following area(s): crisis intervention and patient assessment. Coursework must be preapproved by the Board or its designee. All coursework shall be taken at the graduate level at an accredited educational institution or by an approved continuing education provider. Classroom attendance is specifically required; correspondence or home study coursework shall not count toward meeting this requirement. The coursework must be in addition to any continuing education courses that may be required for license renewal.

Within 90 days of the effective date of this Decision, respondent shall submit to the Board or its designee for its prior approval a plan for meeting the educational requirements. All costs of the coursework shall be paid by the respondent.

5. Ethics Course

Within 90 days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval a course in laws and ethics as they relate to the practice of psychology. Said course must be successfully completed at an accredited educational institution or through a provider approved by the Board's accreditation agency for continuing education credit. Said course must be taken and completed within one year from the effective date of this Decision. The cost associated with the law and ethics course shall be paid by the respondent.

6. Practice Restrictions

During his practice, respondent may not: perform body work therapy; physically touch his patients; allow patients to partially or completely undress; take pictures of patients; or keep a camera in his office.

7. Investigation/Enforcement Cost Recovery

Respondent shall pay to the Board its costs of investigation and enforcement in the amount of \$1,000.00 within the first year of probation. Such costs shall be payable to the Board of Psychology. Failure to pay such costs shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to repay investigation and enforcement costs.

8. Probation Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation. Such costs shall be payable to the Board of Psychology at the end of each fiscal year (July 1 - June 30). Failure to pay such costs shall be considered a violation of probation.

9. Obey All Laws

Respondent shall obey all federal, state, and local laws and all regulations governing the practice of psychology in California including the ethical guidelines of the American Psychological Association. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence.

10. Quarterly Reports

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board or its designee, stating whether there has been compliance with all the conditions of probation.

11. Probation Compliance

Respondent shall comply with the Board's probation program and shall, upon reasonable notice, report to the assigned District Office of the Medical Board of California or other designated probation monitor. Respondent shall contact the assigned probation officer regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with 1)

complainants associated with the case; 2) Board members or members of its staff; or 3) persons serving the Board as expert evaluators.

12. Interview with Board or Its Designee

Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

13. Notification to Employer

Respondent shall provide each of his or her employers, where respondent is providing psychological services, a copy of this Decision and the Accusation or Statement of Issues before commencing employment. Notification to the respondent's current employer shall occur no later than the effective date of the Decision. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

14. Changes of Employment

Respondent shall notify the Board in writing, through the assigned probation officer, of any and all changes of employment, location, and address within 30 days of such change.

15. Tolling for Out-of-State Practice, Residence or In-State Non-Practice

In the event respondent should leave California to reside or to practice outside the State or for any reason should respondent stop practicing psychology in California, respondent shall notify the Board or its designee in writing within ten days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Sections 2902 and 2903 of the Business and Professions Code. Periods of temporary or permanent residency or practice outside California or of non-practice within California will not apply to the reduction of this probationary period, although the Board may allow respondent to complete certain terms of probation that are not associated with active practice.

16. Employment and Supervision of Trainees

If respondent is licensed as a psychologist, he shall not employ or supervise or apply to employ or supervise psychological assistants, interns or trainees during the course of this probation. Any such supervisorial relationship in existence on the effective date of this probation shall be terminated by respondent and/or the Board.

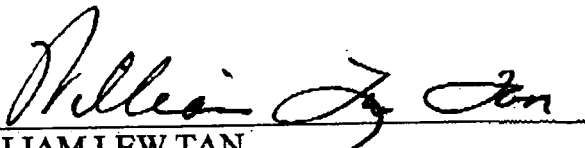
17. Violation of Probation

If respondent violates probation in any respect, the Board may, after giving respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No Petition for Modification or Termination of Probation shall be considered while there is an Accusation or Petition to Revoke Probation pending against respondent.

18. Completion of Probation

Upon successful completion of probation, respondent's license shall be fully restored.

DATED: December 4, 2003


WILLIAM LEW TAN
President, Board of Psychology

EFFECTIVE DATE: January 3, 2004 .

DECLARATION OF SERVICE BY CERTIFIED MAIL

In the Matter of the Accusation filed
Against:

ANDREW TOBEY GOOTNICK

No.: W241

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 1422 Howe Avenue, Ste. 22 Sacramento, California 95825. I served a true copy of the attached:

DECISION AND ORDER

by mail on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

NAME AND ADDRESS

CERT NO.

Andrew Tobey Gootnick, Ph.D.
65 San Carlos Way
Novato, CA 94945

7002 0860 0004 1219 5593

John L. Fleer
Fleer & Daugherty
1646 N California Blvd #680
Walnut Creek, CA 94596-4172


David M. Carr
Deputy Attorney General
Office of the Attorney General
455 Golden Gate Ave., Ste. 11000
San Francisco, CA 94102-7004

Ruth S. Astle, ALJ
Office of Administrative Hearings
1515 Clay St., Ste. 206
Oakland, CA 94612

Each said envelope was then on May 25, 2004, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, as certified mail, with the postage thereon fully prepaid, and return receipt requested.

Executed on, May 25, 2004, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


DECLARANT
Mary Laackmann
Enforcement Analyst